# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 2926 of 1981

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**LAKHIBEN WIDOW OF MOHAN S. PARMAR & 5 - Petitioner(s)**

**Versus**

**HARISHCHANDRA , SON OF DECEASED CHANCHALBEN - Respondent(s)**

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**Appearance :**

MR JITENDRA M PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2, 2.2.1, 2.2.2, 2.2.3,2.2.4 - 3, 3.2.1, 3.2.2, 3.2.3,3.2.4 - 6.
MR AJ PATEL for Respondent(s) : 1,
None for Respondent(s) : 1.2.1
RULE SERVED for Respondent(s) : 1.2.2, 1.2.3, 1.3.2,1.3.3
UNSERVED-EXPIRED (R) for Respondent(s) : 1.3.1

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 20/09/2005**

**ORAL JUDGMENT**

In this petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order passed by the

Gujarat Revenue Tribunal dated 10th April 1981 in Revision Application TEN.B.A. No. 74/80 in dismissing the same and confirming the order passed by the Deputy Collector (Tenancy Appeal), Kheda dated 19.9.1979 as well as the order passed by the Mamlatdar and ALT, Nadiad, dated 24.4.1978.

2. The dispute is with regard to lands bearing Survey No. 153/3, 154, 155/1, 157/1-2-3 situate in the Sim of Village Salun. Father of the petitioners was tenant of the suit land and the respondents/heirs are original landowners. Proceedings under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948, [“the Tenancy Act” for short ] were initiated in the year 1965 and father of the petitioners, deceased Shanabhai made a statement he was not willing to purchase the land and therefore the Mamlatdar passed the order dated 6.8.1965 declaring the sale invalid. Thereafter, proceedings under Section 32-P of the Act were initiated by the Mamlatdar and an order came to be passed on 22.10.1967 directing the tenant to hand over possession of the land and further passed an order that the land should be disposed of according priority under Section 32-P(c) of the Act. It is the case on behalf of the respondents that after following necessary procedure and even in presence of the original-tenant possession was handed over to the respondents, original landowner, i.e. Ravjibhai Somabhai Desai on 19.6.1969 and a Panchnama was also

prepared. It appears from the record that the original-tenant initiated proceedings for getting the land back by making an application under Section 32-PP of the Act which came to be dismissed by the Mamlatdar and ALT, Nadiad, by order dated 24.4.1978 by holding that in view of the fact that the possession was already handed over and/or taken over by the landlord prior to 1973 the application submitted by the tenant under Section 32-PP is not maintainable. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT dated 24.4.1978 in Tenancy Application No. 27/1975 the petitioners, i.e., heirs of deceased Shanabhai Somabhai Parmar, the tenant preferred Tenancy Appeal No. 1856/1979 before the Deputy Collector, (Tenancy Appeals), Kheda and the Deputy Collector by order dated 19.9.1979 dismissed the said appeal. Being aggrieved and dissatisfied with the order passed by the Deputy Collector (Tenancy Appeals), Kheda dated 19.9.1979 in Tenancy Appeal No. 1856/79 the petitioners preferred Revision Application TEN.B.A. No. 74/80 before the Gujarat Revenue Tribunal and the Tribunal by judgment and order dated 10th April 1981 dismissed the said revision application confirming the order passed by both the authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the Tribunal dated 10th April 1981 in Revision Application TEN.B.A. No. 74/80, the petitioners, heirs of deceased Shanabhai Somabhai Parmar, the tenant, have preferred the present Special Civil Application under Article 227 of the

Constitution of India.

3. Shri J.M. Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that all the authorities below have materially erred in holding that the petitioners are not entitled to get the land back under Section 32PP of the Tenancy Act. Shri JM Patel has relied upon Section 32PP of the Tenancy Act, more particularly Explanation to Section 32PP of the Act and has submitted that notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or other authority for the purpose of Clause (ii) of sub-section (1), the land shall be deemed to have been disposed of till the person entitled to take possession of the land in pursuance of any direction issued under sub-section (2) of Section 32P gets actual possession of such land in accordance with law. Relying upon the judgment of the Division Bench of this Court in the case of Rampuri Kalupuri Swami & Another Vs. Nathalal Ishwarbhai Hargovanbhai Shah, reported in ***(1976) 17 GLR Page 81,*** Shri Patel has submitted that Explanation to Section 32PP of the Tenancy Act is considered to be retrospective in operation and therefore the petitioners are entitled to take possession under Section 32PP of the Tenancy Act as no order was passed handing over possession to the persons entitled to take possession of the land as contemplated under sub-section (2) of Section 32P. It is submitted that as per sub-section (2) of

Section 32P the landlord is excluded by the Amendment of 1973 and therefore all the authorities below have materially erred in not allowing the application submitted by the petitioners for getting the land back under Section 32PP of the Tenancy Act. Therefore it is requested to allow the present Special Civil Application.

4. Per contra, Shri Shital Patel, appearing on behalf of Shri AJ Patel,learned advocate for the contesting respondent has while supporting the judgment and order passed by all the authorities below has submitted that in fact the landlord was already handed over possession as per sub-section (2) of Section 32-P of the Tenancy Act in 1969 and that prior to 1973 even the landlord was entitled to get the land as provided in sub-section (2) of Section 32-P, and that when all the authorities below have concurrently found that the possession was already handed over to the landlord prior to 1973 the same are not required to be interfered with by this Court exercising powers under Article 227 of the Constitution of India. He has further submitted that in facts and circumstances of the case, the judgment relied upon by the learned advocate appearing on behalf of the petitioners is not of any assistance to the petitioners as in the present case the possession was already handed over to the landlord on passing the order under sub-section (2) of Section 32-P of the Tenancy Act. It is therefore requested to

dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It appears from the record that the order came to be passed under sub-section (2) of Section 32 on 22.10.1967 and thereafter the possession of land was handed over to the original landowner on 19.6.1969 and Panchkas was also prepared. Prior to 1973 and amendment in Section 32P the landlord was entitled to get possession as mentioned in sub-section (2) of Section 32P and on going through documentary evidence on record more particularly the deposition of the original landlord and other witnesses the possession was handed over to the landlord on 19.6.1969 in presence of the tenant deceased Shanabhai Somabhai Parmar. In that view of the matter, when possession was already handed over to the person entitled to as contemplated under sub-section (2) of Section 32P, i.e., landlord at the relevant time prior to 1973, as rightly held by all the 3 authorities below, the original-tenant and in turn the petitioners being heirs of the original-tenant were not entitled to the possession as contemplated in Section 32PP of the Tenancy Act. All the three authorities below have concurrently found that possession was already handed over to the landlord in 1969. The concurrent finding of fact given by all the authorities below is therefore not required to be interfered with by this Court in exercise of powers Article 227 of the Constitution.

There is no jurisdictional error much less an error of law committed by all the 3 authorities below. On going through the entire record and the facts and circumstances and the fact that possession was already handed over to the landlord in the year 1969, as per sub-section (2) of Section 32-P, the petitioners were not entitled to possession under Section 32PP of the Bombay Tenancy and Agricultural Lands Act, 1948. In view of the facts and circumstances of the case, the judgment cited at the Bar on behalf of the petitioners in *Rampuri Kalupuri Swami & Another (supra)* is not of any assistance to the petitioners.

6. For the reasons stated above, the petition fails. Rule is discharged. However, there will be no order as to costs.

*[M.R. Shah, J.]*

*RMR.*